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IN THE

Supreme Court of the United States

BOY SCOUTS OF AMERICA and MONMOUTH COUNCIL, BOY SCOUTS OF AMERICA,

Petitioners,

v.

JAMES DALE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

Brief Of *Amici Curiae* The General Board Of Church And Society Of The United Methodist Church, The United Church Board For Homeland Ministries, The Religious Action Center Of Reform Judaism, The Diocesan Council Of The Episcopal Diocese Of Newark And The Unitarian Universalist Association In Support Of Respondent

MICHAEL D. SILVERMAN
Counsel of Record
AKIN, GUMP, STRAUSS, HAUER
& FELD, L.L.P.
Attorneys for Amici Curiae
590 Madison Avenue
New York, New York 10022-4616
(212) 872-1039

156388

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

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INTEREST OF THE *AMICI CURIAE*[1]

The General Board of Church and Society of The United Methodist Church (the "Methodist Board") is the public policy and social action agency of The United Methodist Church. The United Methodist Church is the *largest* single sponsor of Boy Scout troops in the country. It sponsors more than 11,700 Boy Scout troops consisting of more than 415,000 boys and men. Pursuant to *The United Methodist Church Book of Discipline — 1996*, the primary responsibility of the Methodist Board is to seek the implementation of the Social Principles of The United Methodist Church. Through its Social Principles, The United Methodist Church has decreed — in irreconcilable opposition to the "moral code" alleged in the Petition — that all persons, regardless of sexual orientation, are entitled to have their human and civil rights protected and that homosexual persons no less than heterosexual persons are individuals of sacred worth. Consistent with the Methodist Board's mission to implement these Social Principles, the General Board of Church and Society of The United Methodist Church opposes the characterization of Boy Scout members' moral views contained in the Petition.

The United Church Board for Homeland Ministries (the "Homeland Ministries") is the domestic mission arm of the United Church of Christ (the "United Church"), which has 1.4 million members in 6,000 congregations. United Church congregations sponsor 1,450 Boy Scout troops consisting of more than 54,000 boys and men. Homeland Ministries is the agency within the United Church responsible for the United Church's relationship with the Boy Scouts of America through its Office for Youth and Young Adult Ministries. The mission

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1. The parties have consented to the filing of this brief. Their letters of consent are on file with the Clerk of the Court. This brief has been authored in its entirety by undersigned counsel for the *amici curiae*. No person or entity, other than the named *amici curiae* and their counsel, made any monetary contribution to the preparation and submission of this brief.

of Homeland Ministries is to serve God by declaring God's love for all people and demonstrating the fruits of that love. Homeland Ministries, like the United Church's General Synod (its highest decision making body) is committed to the full inclusion of lesbian, gay, bisexual and transgender persons in the life and ministry of the church and in society. There are more than 100 openly gay and lesbian clergy serving full time as pastors of United Church congregations. Consistent with the United Church's policies opposing discrimination based on sexual orientation, the United Church Board for Homeland Ministries opposes the Petition's characterization of the views that brought the United Church into Scouting.

The Religious Action Center of Reform Judaism pursues social justice and religious liberty as the official representative of the Union of American Hebrew Congregations, the governing body of Reform Judaism, North America's largest Jewish body. Reform Judaism's 875 congregations (representing 1.5 million people in the United States and Canada) sponsor Boy Scout troops consisting of more than 2,000 boys and men. Reform Jews are aware of the costs to individuals, families and society of the oppression of those who differ from society's majority. For this reason — and in accordance with the teaching of Reform Judaism that all individuals are created *betselem elohim* (in the divine image) — Reform Judaism strongly condemns discrimination on the basis of sexual or affectional orientation and rejects the claimed moral views ascribed to Scouting's members in the Petition as antithetical to the true purposes of Scouting.

The Diocesan Council of the Episcopal Diocese of Newark represents 130 congregations made up of 30,000 confirmed communicants and 275 clergy in seven counties in the State of New Jersey. Congregations represented by the Diocesan Council sponsor Boy Scout troops consisting of hundreds of boys and men. The Diocesan Council, in accordance with the teachings of the Episcopal Church in the United States of America, affirms

the rights of lesbians and gay men to the equal protection of the laws and to live free from discrimination based upon affectional or sexual orientation. The Diocesan Council opposes the Petition's characterization of Boy Scout members' moral views regarding gay boys and men.

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. Unitarian congregations sponsor Boy Scout troops consisting of more than 1,000 boys and men. Through its democratic processes, the Unitarian Universalist Association has adopted numerous resolutions affirming the rights of lesbians and gay men to live free from discrimination based on sexual orientation and affirming the goals of equality, dignity and respect for all people, regardless of affectional or sexual orientation. Consistent with these resolutions, the Unitarian Universalist Association rejects the claimed moral views ascribed to Scouting's members in the Petition.

SUMMARY OF ARGUMENT

Together with public schools and other government entities joining us in the Boy Scouts of America ("Boy Scouts" or "BSA"), we — *amici curiae* — represent a vast number of the sponsors and members actually in the Boy Scouts. Because we have come together with others in the Boy Scouts for its true purposes — teaching *our* boys and young men values such as trustworthiness, loyalty and kindness — and not for discrimination, we affirm to this Court that we have no First Amendment problem in this case. Specifically, *amici curiae* and our boys and young men do not participate in the Boy Scouts for the purpose of expressing the view that gay boys and men are immoral. We believe, in fact, that it is discrimination against gay people that is immoral, a position at odds with the policy cavalierly ascribed to us in the Petition. Accordingly, James Dale's membership in the Boy Scouts will not impair the current members' ability to express any of the views that, in fact, did

bring us together, such as the inculcation in *all* of our boys and young men of values that will " 'prepare them to make ethical choices over their lifetime in achieving their full potential.' " Pet. Mem. at 2, *citing* A.2238.[2]

ARGUMENT

PETITIONERS' CLAIM TO A FIRST AMENDMENT RIGHT TO EXCLUDE GAY BOYS AND MEN FAILS UNDER THIS COURT'S PRECEDENTS BECAUSE THE MEMBERS OF SCOUTING DO NOT SHARE, AND DID NOT COME TOGETHER TO EXPRESS, ANY VIEW ABOUT HOMOSEXUALITY

If it were true, BSA's assertion that "Boy Scout members associate in order to promote . . . the view that homosexuality is immoral" might establish its *members*' First Amendment right to exclude James Dale (and all other gay boys and men) from Scouting. Pet. Mem. at 24. But that assertion is false. As members and sponsors in Scouting for decades, representing a vast share of Scouting's members (youth and adult), we state emphatically that our expressive purposes in Scouting are not impaired by the participation of gay youth and men. BSA's Petition seeks to effectuate personal biases of some under the guise of *our* First Amendment associational freedoms which are *not* implicated by the participation of gay boys and men in Scouting.

Amici curiae religious organizations collectively sponsor (or are the official agencies of religious organizations that sponsor) thousands of Boy Scout troops consisting of hundreds of thousands of boys and men. We are the Boy Scouts' chartered sponsors and we speak both for our boys and young men who

2. "Pet. Mem." refers to Boy Scouts of America and Monmouth Council, Boy Scouts of America's Petition for a Writ of *Certiorari*. Numbers preceded by "A" refer to pages in the record before the New Jersey Supreme Court.

are the members of Scouting and for the adults among us who are the volunteer leaders who run our troops and support our involvement in Scouting.[3] While acutely aware of the critical importance of the First Amendment freedom of expression association, we submit this brief to alert the Court to the *actual* views of BSA members regarding gay boys and men and anti-gay discrimination — views that differ fundamentally and irreconcilably with the views ascribed to Boy Scout sponsors and members in BSA's petition for a writ of *certiorari*. Whatever the BSA may say, neither we nor the public schools, fire departments, police departments and other public entities who join us, participate in Scouting to promote the view that gay boys and men are immoral.

We *do* participate in Scouting — and sponsor troops for our boys and young men to participate in Scouting — for Scouting's *true* purposes as set forth in the Scout Oath and Law. These include teaching *all* of our boys and young men important values that Scouting's members do, in fact, share, such as trustworthiness, loyalty, kindness, respect for others, and bravery. *Dale v. Boy Scouts of America*, 160 N.J. 562, 574-75, 734 A.2d 1196, 1202 (1999). In all of our decades of participation in Scouting, we have never seen any written reference, in any Scouting literature sent to us, to an anti-gay policy. As we have learned of BSA's covert anti-gay policy

3. Organizationally, the Boy Scouts grants unit charters to sponsors consisting of "organizations and groups of citizens" that establish and "maintain units . . . and . . . issue certificates of membership . . . to the officers and members thereof." *Dale v. Boy Scouts of America*, 160 N.J. 562, 572, 734 A.2d 1196, 1201 (1999). Unit charters allow the "organization to use the Scouting program *under its own leadership to serve the youth and families for which it has concern*, to help it accomplish its own objectives." *Id.* (emphasis supplied). As the Boy Scouts' chartered sponsors and members, it is our expressive association rights (and those of the youth and families for which we have concern) that are implicated here. The First Amendment right to associate belongs to an organizations's members. *See, e.g., Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

(through media coverage of various litigations), we have spoken out in opposition to the exclusion of gay boys and men. We will continue to speak out for inclusion of all of our boys and young men as we continue to come together with other members of the Boy Scouts to promote boys' development in accordance with the membership's shared belief in the Scout Oath and Law.

We are familiar with and support the *Roberts* trilogy framework for balancing an organization's legitimate interests in its membership policies with a State's compelling interest in eradicating discrimination. *Roberts v. United States Jaycees*, 468 U.S. 609 (1984); *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987); *New York State Club Ass'n v. City of New York*, 487 U.S. 1 (1988). The *Roberts* trilogy makes clear that an organization may exclude an individual in defiance of an anti-discrimination law *only* when that individual's presence as a member will interfere with the current members' ability to promote those views *that brought them together. Id.* In this case, while some BSA members may believe that gay boys and men are immoral, *amici curiae and the public entities involved in the Boy Scouts do not*, rendering untenable the Boy Scouts' assertions that we, Scouting's members, have come together to express a shared view of the morality of gay boys and men or that the inclusion of gay boys and men in the Boy Scouts will impair our ability to express those views that did, in fact, bring us all together.

A. The Views of *Amici Curiae* Religious Sponsors and Members of Scouting

1. *The United Methodist Church*

The United Methodist Church (of which *amicus curiae* the General Board of Church and Society of The United Methodist Church is the official agency empowered to promote its Social Principles) is the *largest* single sponsor of the Boy Scouts nationally with more than 11,700 troops

consisting of more than 415,000 boys and men. In fact, James Dale's Boy Scout troop — Troop 73 — was sponsored by The United Methodist Church and met in a hall provided by the Matawan First United Methodist Church. A.205. The United Methodist Church has for decades supported the true purposes of Scouting, including teaching all boys and young men to be loyal, courageous, honest and reverent. The United Methodist Church does not participate in Scouting to promote the view that gay boys and men are immoral.

Indeed, the United Methodist Church strongly condemns discrimination against gay boys and men. *See generally* A.3965. The *Book of Discipline of The United Methodist Church — 1996* (the "*Book of Discipline*"), adopted by the General Conference of The United Methodist Church in 1996, states that "[w]e insist that all persons, regardless of age, gender, marital status, or sexual orientation, are entitled to have their human and civil rights ensured." *Book of Discipline* Section II, ¶ 65(G) ("Human Sexuality") at 89. The *Book of Discipline* also affirms that "[h]omosexual persons no less then heterosexual persons are individuals of sacred worth," *id.*, and states that United Methodists "are committed to supporting [human] rights and [civil] liberties for homosexual persons." *Id.* Section III, ¶ 66(H) ("Equal Rights Regardless of Sexual Orientation") at 94. It recognizes as well that claims of gay people to "equal protection before the law" present "a clear issue of simple justice." *Id.* As The United Methodist Church's policies demonstrate, the Boy Scouts' assertion that The United Methodist Church participates in Scouting to promote the view that homosexuality is immoral is false.

Accordingly, when it learned about the Boy Scouts' anti-gay litigation policy, The United Methodist Church's General Board of Church and Society, fulfilling its obligation to ensure the implementation of the Social Principles of The United Methodist Church which unequivocally prohibit discrimination

against gay boys and men, condemned the anti-gay policy and stated that:

> [T]he Boy Scouts of America's discrimination against gays . . . conflicts with [The United Methodist Church's] Social Principles. . . . The General Board of Church and Society affirms the decision of the New Jersey Supreme Court in the case *James Dale v. Boy Scouts of America* that ruled the Boy Scouts of America is discriminatory in its exclusion of gays. We . . . call upon the Boy Scouts of America to discontinue this exclusion of gays.

Statement of the General Board of Church and Society of The United Methodist Church, adopted October 10, 1999.

Tellingly, rather than seeking to exclude its largest sponsor from the Boy Scouts because of The Methodist Church's condemnation of discrimination against homosexuals, the Boy Scouts responded to adoption of the Methodist Board's October 10, 1999 Statement affirming the New Jersey Supreme Court's decision in this case by stating that "[w]e hope that we could continue the relationship with [T]he United Methodist Church." Frank J. Murray, *Methodist Panel Chides Scouts On Gay Troops,* Washington Times, October 13, 1999, at A3. By contrast, James Dale, who had expressed no view, was summarily excluded from the Boy Scouts *not* because of any conflict between his views and the views of the Boy Scouts' existing members, but solely because Boy Scout officials fortuitously discovered that he is gay.[4]

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4. It bears explaining why the General Commission on United Methodist Men (the "UMM"), a newly formed entity that recently acts as The United Methodist Church's liaison to the Boy Scouts, has chosen to file a brief *amicus curiae* in support of Petitioners and in opposition to the positions of The United Methodist Church. Under The United Methodist Church organizational policy, UMM may file such a brief (Cont'd)

2. *The United Church of Christ*

The United Church of Christ, whose congregations sponsor more than 1,450 Boy Scout troops consisting of more than 54,000 boys and men (making it one of the Boy Scouts' 15 largest chartered organizations as of 1997), has a long history of participation in the Boy Scouts of America. We have always understood the true purposes of Scouting to be to teach our boys and young men to live in accordance with the Scout Oath and Law obediently, bravely, kindly and reverently. The assertion by BSA officials that United Church congregations and boys participate in Scouting to promote the view that gay boys and men are immoral is simply incorrect.

In fact, we have a long history of opposing discrimination based on sexual orientation. In 1977, for example, the biennial United Church General Synod (the United Church's highest decision making body):

(Cont'd)
expressing *only* the views of the 23 UMM board members. *Amicus curiae* The General Board of Church and Society of The United Methodist Church, by contrast, is required by The United Methodist Church to implement the Social Principles of The United Methodist Church (including those condemning discrimination against homosexuals) that have been adopted by the General Conference (and which thereby represent the view of the The United Methodist Church as a whole). As Rev. Faith Conklin, who is a board member of UMM, explained upon voting against UMM filing an *amicus* brief on Petitioners' behalf, "[s]uch action [ ] conflicts and is inconsistent with [the Church's] stated affirmation of the worth of every person and [the Church's] commitment to reject justice denying policies of discrimination." United Methodist News Service, *United Methodist Men to Support New Jersey Boy Scout Appeal*, September 20, 1999. In any event, UMM's unwillingness to abide by The United Methodist Church's policy opposing discrimination against homosexuals only serves to further demonstrate that the members of the Boy Scouts do not share any view of homosexuality and did not come together in the Boy Scouts to express any such view.

> 1. Reaffirm[ed] the action of the Tenth General Synod in its pronouncement on Civil Liberties Without Discrimination Relating to Affectional or Sexual Preference [or Orientation];
>
> 2. Deplore[d] the use of scripture to generate hatred, and the violation of civil rights of gay and bisexual persons; and
>
> 3. Call[ed] upon individual [United Church] members, local churches, Associations, Conferences, and Instrumentalities to continue to work for the enactment of civil rights legislation at the federal, state, and local levels of government.

Eleventh General Synod of the United Church of Christ, Resolution Deploring the Violation of Civil Rights of Gay and Bisexual Persons (1977). A.3823. Indeed, the United Church was an early supporter of the rights of lesbians and gay men; in 1972, in fact, the United Church ordained its first openly gay minister. Deb Price, *Times Have Changed, But Not Fast Enough,* San Francisco Examiner, June 21, 1994, at B7. Since 1975, the United Church has reaffirmed its commitment to ensuring full civil rights for lesbians and gay men and has taken steps to "facilitate the ordination and placement of qualified lesbian, gay and bisexual candidates" for ministry in United Church congregations. General Synod of the United Church of Christ, Resolution on Affirming Gay, Lesbian and Bisexual Persons and Their Ministries (1991). A.3858.

As our policies make clear, the Petition's assertion that we participate in Scouting to promote the view that homosexuality is immoral is false. In fact, as word spread through the media of the Boy Scouts' litigation position regarding gay boys and men, we concluded that this shocking stance was incompatible with our own anti-discrimination policies. Accordingly, on February 8, 1993, Rev. Gordon J. Svoboda, II, *amicus curiae* United

Church Board for Homeland Ministries' Secretary for Education in Human Identity and Youth and Young Adult Programs, wrote to the Boy Scouts, noting that:

> [n]o less than eleven votes in the national setting have been taken inviting study and action to overcome homophobia and the resultant prejudice against gay, lesbian, and bisexual persons. These votes, taken by the church's highest deliberative body, the General Synod, and its Executive Council, address our needs: to affirm the civil liberties of all persons without discrimination based on sexual orientation; to encourage the welcoming of gay, lesbian, and bisexual persons into membership and ordained ministry in the United Church of Christ; and, to protect the right to privacy of all people in consensual, adult relationships.

The letter implored "the Boy Scouts of America [to] stop its discriminatory practices of prohibiting openly gay, lesbian, and bisexual persons from holding leadership positions at all levels of the scouting organization."

Despite our expressed moral views (contrary to those in the Petition), the Boy Scouts nevertheless sought the endorsement of the United Church in 1998 in order to recruit local United Church congregations as Boy Scouts sponsors. On September 18, 1998, Rev. Dr. Paul H. Sherry, President of the United Church, wrote to Jere B. Ratcliffe, Chief Scouting Executive of the Boy Scouts and Thomas R. Deimler, Director of Religious Relationships of the Boy Scouts, stating again that:

> The General Synod of the United Church of Christ has a twenty-nine year history of pronouncements, resolutions, and prophetic actions seeking affirmation and justice for gay, lesbian, and bisexual persons, both in the church and in the larger

> society. . . . *I ask you, again, to abandon policies and practices which, in our judgment, perpetuate homophobia, hate and hurt to others, and fail to support the most fundamental values of respect and compassion for others which Scouting seeks to encourage*. We are deeply concerned about the damage being done to gay youth who wish to participate in scouting and the destructive effects upon non-gay youth whose anti-gay prejudices may be reinforced by your policies.

(Emphasis supplied).

In response, Mr. Deimler of the Boy Scouts wrote to Rev. Dr. Sherry of the United Church on November 23, 1998 that "[o]ur goal will be to continue the national support of the Boy Scouts of America in serving youth of the United Church of Christ through Scouting." As with The United Methodist Church, it is apparent that while heterosexual members and sponsors may hold *any* view of homosexuality contrary to the claims of the Petition, gay boys and men are automatically excluded from membership solely because of who they are.[5]

3. *Reform Judaism*

The Union of American Hebrew Congregations ("UAHC") (represented in this action by its social justice agency, *amicus curiae* Religious Action Center of Reform Judaism), the governing body of Reform Judaism, North America's largest Jewish body, sponsors BSA troops in order to teach our boys

5. Unlike this anti-gay policy, the opposing views of *amici curiae* and other members were always known. When deciding whether to grant or renew an individual unit charter, BSA investigates "the general objectives, purpose, character, intent, and programs of the prospective chartered organization or community group and its compatibility with the aims and purposes of the Boy Scouts of America." *Dale*, 160 N.J. at 572.

and young men to live in a trustworthy, loyal, kind, brave and reverent manner consistent with the Scout Oath and Law.[6] We do not participate in Scouting for our boys to learn that gay boys and men are immoral or should be excluded, beliefs we simply do not hold.

On the contrary, the UAHC "has consistently supported the civil rights and civil liberties of all persons" and has stated in particular "that homosexual persons are entitled to equal protection under the law. We oppose discrimination against homosexuals in areas of opportunity, including employment and housing. We call upon our society to see that such protection is provided in actuality." General Assembly of UAHC, Statement on Human Rights of Homosexuals (1977). A.3897.

Not only have we consistently opposed discrimination based upon affectional or sexual orientation, we have specifically welcomed lesbian and gay Jews as leaders of our congregations. The Central Conference of American Rabbis declared in 1990 that "[a]ll Jews are religiously equal regardless of sexual orientation." That being the case, the statement continued, "all rabbis, regardless of sexual orientation, [should] be accorded the opportunity to fulfill the vocation which they have chosen." Central Conference of American Rabbis, Ad Hoc Committee on Homosexuality and the Rabbinate, Report (June 25, 1990). A.3902; *see also Gay Rabbis*, Time, July 9, 1999, at 62; Ari L. Goldman, *Reform Judaism Votes to Accept Active Homosexuals in Rabbinate*, N.Y. Times, June 26, 1990, at A1. The Boy Scouts' assertion that we participate in Scouting to promote the Petition's asserted "moral code" is incorrect. Pet. Mem. at 15.

Indeed, we believe that discrimination against an individual because of his sexual orientation is no more morally acceptable

6. UAHC congregations sponsor Boy Scout troops consisting of at least 2,000 boys and men. Many more Reform Jews are affiliated with Scouting through non-UAHC organizations.

because it is practiced by an organization which otherwise promotes laudatory values. We have specifically voiced our condemnation of BSA's anti-gay policy. On April 9, 1992, the Executive Board of the Central Conference of American Rabbis called upon Petitioners "to open [their] membership and leadership to all men and boys without regard to their sexual orientation." Executive Board of the Central Conference of American Rabbis, Resolution (April 9, 1992). A.3893; *see also* A.3886-A.3887; A.3894 (Executive Board of the National Federation of Temple Youth, the largest youth organization of Reform Judaism, Resolution (1992-'93), calling upon the Boy Scouts "to open its membership and leadership to all men . . . and boys without regard to their sexual orientation"). We have urged BSA officials to reverse this policy barring gay members, noting that our congregations sponsor Boy Scouts troops consistent with our support for human rights, including "full inclusion of lesbian and gay Jews in all aspects of synagogue life." *Jewish Groups Decry Gay Ban,* Washington Times, July 11, 1992, at B4.

In response to the New Jersey Supreme Court's decision in this case, *amicus curiae* Religious Action Center of Reform Judaism on August 5, 1999 stated:

> We applaud yesterday's decision by the New Jersey Supreme Court requiring the Boy Scouts of America to stop discriminating against homosexuals who wish to participate in scouting activities. . . . The Justices made clear that they find discrimination on the basis of sexual orientation repugnant. So do we. . . . Rank discrimination should have no place in an organization that aspires to inculcate fundamental American values in our nation's boys.

Statement of Rabbi David Sapperstein, Director of the Religious Action Center of Reform Judaism (August 5, 1999). BSA officials have not expelled us for stating our opposing views.

4. *The Protestant Episcopal Church in the U.S.A.*

The Diocesan Council of the Episcopal Diocese of Newark sponsors Boy Scout troops to teach our boys and young men values consistent with the true purposes of Scouting, such as loyalty, courage, kindness, cleanliness, obedience and reverence. We do not participate in Scouting to promote the view that homosexuality is immoral.

Such a view, in fact, contradicts the teachings of The Protestant Episcopal Church in the U.S.A. (the "Episcopal Church") which has a long history of opposition to discrimination on the basis of affectional or sexual orientation.[7] In 1976, the Episcopal Church issued the following statement:

> Resolved, House of Bishops concurring, that it is the sense of this General Convention that homosexual persons are children of God, who have a full and equal claim with all other persons upon the love, acceptance, and pastoral concern and care of the Church.
>
> * * *
>
> [T]his General Convention expresses its conviction that homosexual persons are entitled to equal protection of the law with all other citizens, and calls upon our society to see such protection provided in actuality.

General Convention of the Protestant Episcopal Church in the U.S.A., Statement on Homosexuality (1976). A.3949. In 1982, the General Convention of the Episcopal Church reaffirmed its position that "homosexual persons are children of God and are entitled to full civil rights." General Convention of the Episcopal

7. The Episcopal Church sponsors more than 1,400 BSA troops consisting of more than 50,000 boys and men.

Church, Resolution on Civil Rights of Homosexuals (1982). A.3950.

Additionally, since that time, the Standing Commission on Human Affairs of the Episcopal Church has recommended that the church allow gay and lesbian clergy at the discretion of local bishops. *See, e.g.*, Peter Steinfels, *Lesbian Ordained Episcopal Priest*, N.Y. Times, July 6, 1991, at A1. The Boy Scouts' assertion that we participate in Scouting to promote the Petition's incompatible view of gay youth and men is incorrect and fundamentally ignores the beliefs and policies of the Episcopal Church.

Consistent with these beliefs and policies, we opposed this anti-gay policy upon learning of it and have called upon BSA officials "to admit to full membership otherwise qualified homosexual persons." Diocesan Council of the Episcopal Diocese of Newark, Resolution on the Diocese of Newark and the Boy Scouts of America (June 9, 1993). A.3958; *see also* A.3913. BSA officials have not expelled us for stating our opposing views.

5. *Unitarian Universalist Association*

Like other members of Scouting, congregations affiliated with the Unitarian Universalist Association ("UUA") sponsor Boy Scout troops for Scouting's true purposes — teaching our boys and young men, among other things, to live kindly, obediently and bravely. Unitarian Universalists do not participate in Scouting to promote the "morality" described in the Petition.

In fact, Unitarians long ago recognized that "[h]omosexuality has been the target of severe discrimination by society" and "urge[d] all peoples immediately to bring an end to discrimination against homosexuals, homosexuality, bisexuals, and bisexuality." General Assembly of the Unitarian Universalist Association, Resolution on Discrimination Against

Homosexuals and Bisexuals (1970). A.3807. Specifically, the Unitarian Universalist Association:

> call[ed] upon the UUA and its member churches, fellowships, and organizations immediately to end all discrimination against homosexuals in employment practices, expending special effort to assist homosexuals to find employment in our midst consistent with their abilities and desires; [and]
>
> urge[d] all churches and fellowships . . . to initiate meaningful programs . . . with the particular aim to end all discrimination against homosexuals and bisexuals.

Id.

Since that time, the UUA has continued to support the rights of lesbians and gay men through its Office of Lesbian, Bisexual and Gay Concerns. In particular, in 1980, the UUA called upon the Unitarian Universalist Ministers' Association and the UUA Department of Ministerial and Congregational Service "to lend full assistance in the settlement of qualified openly gay, lesbian and bisexual religious leaders." General Assembly of the Unitarian Universalist Association, Resolution on Ministerial Employment Opportunities (1980). A.3809. Moreover, in 1987, the UUA renewed its call for "organizations and society at large to end discrimination against gay and lesbian people" and again expressed its support "for the passage of laws prohibiting discrimination based on sexual orientation." General Assembly of the Unitarian Universalist Association, Resolution on Supporting Legal Equity for Gays and Lesbians (1987). A.3811. BSA officials' assertion that we participate in Scouting to promote the view that homosexuality is immoral is incorrect and ignores our beliefs and policies.

B. Governmental Sponsors of Boy Scouts

More than any single religious denomination, government entities (including public schools) — which sponsor well over 19,000 Boy Scout troops consisting of more than 575,000 boys and men — constitute the largest sponsor of Boy Scout troops in the nation. *Chartered Organizations: Top 30 For 1997 Ranked By Total Youth*, BSA Today, No. 5-886, February/March 1998 ("Chartered Organizations"). Like *amici curiae* religious members, government entities subject to Constitutional equal protection guarantees and state civil rights laws such as New Jersey's Law Against Discrimination do not (and may not) participate in the Boy Scouts to express the view that gay boys and men are immoral or that they should be subject to exclusion from the Boy Scouts. *See generally Romer v. Evans*, 517 U.S. 620 (1996). Like other members of the Boy Scouts, they participate in order to teach boys and young men the fundamental and inclusive values set forth in the Scout Oath and Law that have always brought Scouting's members together.

Governmental sponsors of the Boy Scouts include civilian branches of the U.S. Air Force, U.S. Army, U.S. Coast Guard, U.S. Coast Guard Auxiliary, U.S. Marine Corps and U.S. Navy. A.4455. NASA is a sponsor of the Boy Scouts, A.4456, as is the Department of Housing and Urban Development. *Chartered Organizations*. Throughout the nation, local government entities, including fire and police departments, are also sponsors of Boy Scouts troops. *Id.*; *see generally* A.1592. The New Jersey Supreme Court found that "in New Jersey, for example, public schools [which are barred by the Law Against Discrimination from discriminating against gay boys in the provision of public school services] and school-affiliated groups sponsor close to 500 scouting units, comprising approximately one-fifth of the chartering organizations in the State. Other governmental entities, such as law enforcement agencies, fire departments, city governments, and the [civilian] military, sponsor approximately 250 scouting units in New Jersey." *Dale*, 160

N.J. at 573. The same is true nationally. A.4455; *Chartered Organizations*.

Public schools, in particular, are one of the largest sponsors of Boy Scout troops in the nation. *Chartered Organizations*. Public schools participate in the Boy Scouts because they wish their students to learn the fundamental values set forth in the Scout Oath and Law, *not* because they wish to promote the view that gay youth and men are immoral.

In fact, consistent with applicable Constitutional equal protection guarantees and legal prohibitions on discrimination, public school boards and public school organizations nationwide prohibit discrimination against gay youth in school and school-sponsored activities such as the Boy Scouts. The National School Boards Association, for example, which serves as the national voice for 17,000 local school districts nationwide and which is a national leader in the formulation and implementation of federal and national educational policy, has stated unequivocally that its member schools must "ensure that students are not subjected to discrimination on the basis of socioeconomic status, race, color, national origin, religion, gender, disability, or *sexual orientation*." Beliefs and Policies of the National School Boards Association, as amended April 12, 1999, Article II ("Responsibilities of Local School Boards"), Sec. 3.4 (emphasis supplied).[8]

Schools and other public entities are members of Scouting side by side with diverse religious groups who agree to disagree on many doctrines and moral views in order to join together to support the goals we do agree upon. Like us, these public entities participate in Scouting for the reasons that we, as Scouting's members, have always come together — to teach all our boys

8. A copy of this document is on file with counsel and available upon request. It is also available on the internet at the website of the National School Boards Association (http://www.nsba.org/about/beliefs.htm).

and young men (including gay boys and young men) the values and skills of citizenship, community service and self-respect embodied in the Scout Oath and Law.

CONCLUSION

The broad support among the Boy Scouts' religious and governmental sponsors and members for the equal legal rights and human dignity of gay boys and men belies the Petition's contention that these diverse public and religious sponsors and members come together in Scouting for an expressive purpose that mandates exclusion of gay boys and men. The Petition's characterization of a "moral code" that gay youth and adults among us automatically cannot share in is a smokescreen for invidious discrimination against gay youth and adults in violation of New Jersey law. BSA's policy excludes gay boys and men from Scouting without regard to their adherence to the Petition's "moral code," while, by contrast, any heterosexual or sponsoring organization may participate in the Boy Scouts even if that individual or organization loudly opposes the Petition's "moral code" and the policy regarding gay youth and men.

The New Jersey Supreme Court correctly recognized that Petitioners' summary exclusion of gay boys and men — and inconsistent tolerance of conflicting opinions regarding gay boys and men from heterosexuals — forecloses the possibility that BSA "seeks to exclude individuals who do not share the views that the clubs' members wish to promote," *New York State Club Ass'n*, 487 U.S. at 13, and leads inexorably to the conclusion that the BSA is impermissibly using sexual orientation as a shorthand measure "in place of . . . legitimate criteria for determining membership." *Id.* We, the members and sponsors of Scouting, have no First Amendment problem with enforcement of the Law Against Discrimination. This case raises no First Amendment concerns and the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

MICHAEL D. SILVERMAN
Counsel of Record
AKIN, GUMP, STRAUSS, HAUER
& FELD, L.L.P.
Attorneys for Amici Curiae
590 Madison Avenue
New York, New York 10022-4616
(212) 872-1039